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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 50 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

LALJIBHAI BHAGWANBHAI KHARAWLA

Appearance:

1. WEALTH TAX REFERENCE No. 50 of 1987
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question has been referred by the Income-tax Appellate Tribunal, Ahmedabad for the opinion of this Court under Section 27 of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act") :-

"Whether in law and on facts the reversionary value of land was to be added while working out the value of the property ?"

2. The relevant assessment year is 1969-70. The assessee was the owner of two immovable properties. The assessment proceedings were finalized on the basis of the valuation report in respect of the properties including property No. 1355 situate at Jamalpur. The Valuation Officer undertook the valuation on the basis of the rental method and also added the reversionary value of the land. Relying on the decision of the Calcutta High Court in *Devi Prasad Poddar vs. CWT*, 109 ITR 760, the assessee contended before the Commissioner of Wealth-tax (Appeals) that as the property had been valued on the rental method, the reversionary value of the land could not be added over and above the market value of the property. The appeal was allowed. The Tribunal confirmed the appellate order of the Commissioner of Wealth-tax (Appeals) by following the aforesaid decision of the Calcutta High Court. Hence, this reference at the instance of the revenue.

3. We have heard Mr Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

4. There is no dispute about the fact that property No. 1355 at Jamalpur was rented property at the relevant time. It is also held that the land was fully developed and the rent realized was also commercial. Hence, the Commissioner of Wealth-tax was of the view that the land-cum-building method of valuation adopted by the department valuer was not the correct method to find out the market value of the property and that the value declared by the assessee on the basis of the rental method was reasonable. As regards the question of reversionary method of valuation of the land, this very issue was considered by the Calcutta High Court in *CIT vs. Smt. Ashima Sinha*, 116 ITR 26. The Calcutta High Court observed that when a property is valued on rental basis the result is the value of the land and building taken together and, therefore, the value of the land cannot be added again by adding the reversionary value of the land because the building is very old. The tenants can neither be evicted nor can their rents be enhanced by

reason of restrictive legislation such as the provisions of the Bombay Rent Act. The Calcutta High Court made the following observations on this question :-

"We have failed to understand either the principles or the logic of the "reversionary" method of valuation as applied by the Valuation Officer of the department in the instant case. After following the "yield or rental" method and having arrived at a figure the Valuation Officer has added to it the value of an imaginary reversion in future. We invited Mr Pal to cite any authority which has approved or even indicate this method but he was unable to do so. It is stated in Parks' Valuation (at p. 38) that when a property is valued on rental basis the result is the value of the land and building taken together which cannot afterwards be apportioned. In the method adopted by the Valuation Officer the value of the land is taken twice, being included in the amount arrived at by the "yield or rental" method and again under the "reversionary" method. This is an entirely novel approach but in our view erroneous."

5. We are in respectful agreement with the aforesaid view expressed by the Calcutta High Court that when the value of the property consisting of building with land is taken on the basis of the rental method, such value includes the value of the land as well as the building taken together and, therefore, the value of the land cannot be again added by adding the reversionary value of the land.

6. In view of the above discussion, our answer to the question referred for our opinion is in the negative i.e. in favour of the assessee and against the revenue.

7. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-